LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature First Regular Session - 2021

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 17

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO PUBLIC FUNDS FOR ABORTION; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 97, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE TERMS, TO PROHIBIT GOVERNMENT CONTRACTS WITH ABORTION PROVIDERS OR THEIR AFFILIATES, TO PROHIBIT CONTRACTS FOR ABORTION PROCEDURES, TO PROHIBIT THE USE OF PUBLIC FUNDS FOR ABORTION, TO PROHIBIT THE USE OF SCHOOL TUITION AND FEES FOR ABORTION, TO PROHIBIT ABORTION-RELATED ACTIVITIES IN SCHOOL-BASED HEALTH CLINICS, TO PROHIBIT THE USE OF PUBLIC FACILITIES AND ASSETS FOR ABORTION, TO PROVIDE CONSTRUCTION, TO PROVIDE FOR A RIGHT OF INTERVENTION, AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 97, Title 39, Idaho Code, and to read as follows:

CHAPTER 97
NO PUBLIC FUNDS FOR ABORTION ACT

39-9701. SHORT TITLE. This chapter shall be known and may be cited as the "No Public Funds for Abortion Act."

39-9702. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds that when a state appropriates public funds to establish a program, it is entitled to define the limits of that program, Rust v. Sullivan, 500 U.S. 173, 194 (1991);
(2) The decision not to fund abortion or abortion providers places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, Rust v. Sullivan, 500 U.S. 173, 201 (1991);
(3) The state of Idaho may rationally distinguish between abortion and other medical procedures because "no other procedure involves the purposeful termination of a potential life," Harris v. McRae, 448 U.S. 297, 325 (1980);
(4) It is permissible for the state of Idaho to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest, Rust v. Sullivan, 500 U.S. 173, 201 (1991); and
(5) It is the purpose of this chapter is to ensure that public funds are not used to directly or indirectly subsidize abortion or abortion providers.

39-9703. DEFINITIONS. As used in this chapter:
(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, remove a dead unborn child caused by spontaneous abortion, or remove an ectopic pregnancy.

(2) "Affiliate" means a company, organization, business concern, or individual person that shares resources, interests, or business dealings with another company, organization, business concern, or individual person; is directly or indirectly controlled by a third party or another company, organization, or business concern; is fully or partially controlled by a third party or another company, organization, business concern, or individual person; or is under the common control of a third party or another company, organization, business concern, or individual person.

(3) "Facility" or "health care facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(4) "Health care provider" means any person or individual who may be or is asked to participate in any way in any health care service. This includes but is not limited to doctors, nurse practitioners, physician assistants, nurses, nurses' aides, allied health professionals, medical assistants, hospital employees, clinic employees, nursing home employees, pharmacists, pharmacy technicians and employees, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in the provision of health care services to any person.

(5) "Public funds" means the funds of every political subdivision of the state wherein taxes are levied or fees are collected for any purpose and also refers to:

(a) The revenue or money of a government, state, or municipal corporation;
(b) The bonds, stock, or other securities of a national or state government; and
(c) Government spending for acquisition of goods and services for current use to directly satisfy individual or collective needs of the members of the community.

39-9704. GOVERNMENT CONTRACTS WITH ABORTION PROVIDERS OR THEIR AFFILIATES PROHIBITED. (1) The state, a county, city, public health district, public school district, or any local political subdivision thereof may not enter into any contract or commercial transaction with an abortion provider or an affiliate of an abortion provider.

(2) Subsection (1) of this section shall not apply to:
(a) A contract or commercial transaction that is subject to a federal law that is in conflict with subsection (1) of this section; or
(b) A hospital, as defined in section 39-1301, Idaho Code.

39-9705. CONTRACTS FOR ABORTION PROCEDURES PROHIBITED. (1) No health care facility owned or operated by the state, a county, city, public health district, or any political subdivision or agency thereof shall enter into any contract or commercial transaction with any health care provider or health care facility under the terms of which such health care provider or health care facility agrees to provide, perform, or induce an abortion, except when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) Subsection (1) of this section shall not apply to:

(a) A contract or commercial transaction that is subject to a federal law that is in conflict with subsection (1) of this section; or

(b) A hospital, as defined in section 39-1301, Idaho Code.

39-9706. USE OF PUBLIC FUNDS FOR ABORTION PROHIBITED. (1) No public funds made available by the state, a county, city, public health district, public school district, or any local political subdivision or agency thereof and distributed by any institution, board, commission, department, agency, official, or employee of the state, a county, city, public health district, public school district, or any local political subdivision or agency thereof shall be used in any way to provide, perform, or induce an abortion; assist in the provision or performance of an abortion; promote abortion; counsel in favor of abortion; refer for abortion; or provide facilities for an abortion or for training to provide or perform an abortion.

(2) No person, agency, organization, or any other party that receives funds authorized by the state, a county, city, public health district, public school district, or any local political subdivision or agency thereof may use those funds to perform or promote abortion, provide counseling in favor of abortion, make referral for abortion, or provide facilities for abortion or for training to provide or perform abortion.

(3) No fund or committee authorized by Idaho Code for the special protection of women or children shall be authorized to use or distribute public funds for payment for abortion, abortion referrals, abortion counseling, or abortion-related medical or social services.

(4) The provisions of subsections (1), (2), and (3) of this section shall not apply to:

(a) An abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(b) A hospital, as defined in section 39-1301, Idaho Code; or

(c) Any provision of this section found to be in conflict with federal law.

39-9707. USE OF SCHOOL TUITION AND FEES FOR ABORTION PROHIBITED. No part of any tuition or fees paid to a public institution of higher education shall be used in any way to pay for an abortion, provide or perform an abortion, provide counseling in favor of abortion, make a referral for abortion,
or provide facilities for an abortion or for training to provide or perform
abortion.

39-9708. ABORTION-RELATED ACTIVITIES PROHIBITED IN SCHOOL-BASED
HEALTH CLINICS. (1) No facility operated at a public institution of higher
education or operated by a public school district shall provide any of the
following services to any person:
(a) Providing or performing an abortion;
(b) Counseling in favor of abortion;
(c) Referring for abortion; or
(d) Dispensing a drug classified as "emergency contraception" by the
food and drug administration (FDA), except in the case of rape as de-
dined in section 18-6101, Idaho Code.
(2) No employee of a public institution of higher education or public
school, acting within the scope of such person's employment, shall provide
any of the following services to any person:
(a) Providing or performing an abortion;
(b) Counseling in favor of abortion;
(c) Referring for abortion; or
(d) Dispensing a drug classified as "emergency contraception" by the
FDA, except in the case of rape as defined in section 18-6101, Idaho
Code.
(3) The state department of education, state board of education, or
other state agency and local units of administration are prohibited from
using state funds to provide or procure an abortion or distribute drugs clas-
sified as "emergency contraception" by the FDA, except in the case of rape as
defined in section 18-6101, Idaho Code.

39-9709. USE OF PUBLIC FACILITIES AND ASSETS FOR ABORTION PROHIB-
ITED. (1) No public institution, public facility, public equipment, or
other physical asset owned, leased, or controlled by this state, a county,
city, public health district, public school district, or any local political
subdivision or agency thereof shall be used for the purpose of providing,
performing, or participating in an abortion.
(2) No public institution or facility shall lease, sell, or permit the
subleasing of its facilities or property to any physician or health care fa-
cility for use in the provision or performance of abortion.
(3) The provisions of subsections (1) and (2) of this section shall not
apply to:
(a) An abortion performed when the life of the mother is endangered by
a physical disorder, physical illness, or physical injury, including a
life-endangering physical condition caused by or arising from the preg-
nancy itself;
(b) A hospital, as defined in section 39-1301, Idaho Code; or
(c) Any provision of this section found to be in conflict with federal
law.

39-9710. CONSTRUCTION. Nothing in this chapter shall be construed as
creating or recognizing a right to abortion. Nothing in this chapter shall
be construed as creating or recognizing a right to federal or state funds for abortion.

39-9711. RIGHT OF INTERVENTION. The Idaho legislature, by joint resolution, may appoint one (1) or more of its members who sponsored or co-sponsored this chapter in his official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

39-9712. SEVERABILITY. Any provision of this chapter held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.